

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
85 Marconi Blvd.
Columbus, Ohio 43215

FILED
JAMES BONINI
CLERK

2009 NOV 19 A 11: 20

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
COLUMBUS

UNITED STATES,)	Case No. 2:09-cv-852
)	
Plaintiff,)	Judge Sargus
)	
vs.)	Magistrate Judge King
)	
JOHN ALLEN (sic),)	Objections to UNITED
)	STATES' Response to
)	Affidavit to Dismiss Case
)	And Quash Summons
Respondent)	

The UNITED STATES has submitted a Response alleging that it "has made its prima facie case showing that the summons should be enforced."

John Allen submits the following objections disproving the alleged prima facie case and showing that the four (4) prongs of *United States v. Powell*, 379 U.S. 48, 57-58 (1964) have indeed not been met.

For the record, John Allen is not a "taxpayer," but is a "nontaxpayer" according to *Economy Plumbing and Heating v. United States*, 470 F.2d 585, 589-590 (U.S. Court of Claims, 1972):

The revenue laws are a code or system in regulation of tax assessment and collection. They relate to **taxpayers** and not to **nontaxpayers**. The latter are without their scope. No procedure is prescribed for nontaxpayers, and no attempt is made to annul any of their rights and remedies in due course of law. With them Congress does not assume to deal, and they are neither of the subject nor of the object of the revenue laws. (Emphasis added.)

Since John Allen is a "nontaxpayer," his alleged "burden" to disprove the government's prima facie case is extremely slight as opposed to that of a "taxpayer."

Nonetheless, out of excess of caution, Mr. Allen will disprove said government's prima facie case.

Defendant UNITED STATES has failed the first prong of *Powell* in that Mr. Allen, as a "nontaxpayer," is not required to mail or file a return (MFR-01 status issued by the IRS) and has no tax liability. Consequently, there cannot be a proper purpose to issue a summons pertaining to Mr. Allen.

It is important to note and the Court must take mandatory judicial notice that the United States Supreme Court held that it is the violation of the regulation and not the statute which triggers a civil or criminal penalty. See, *California Bankers Association v. Shultz*, 416 U.S. 21; *U.S. v. Mersky*, 361 U.S. 431.

Defendant Farley is allegedly attempting to determine whether Mr. Allen is liable for penalties under 26 USC §§ 6694, 6695, 6700 and 6701. Defendants Farley and UNITED STATES know that the Secretary of the Treasury did not write any regulations for §§ 6694, 6695 and 6700; therefore, there cannot possibly be any civil or criminal liability attributed to Mr. Allen. Additionally, the regulation which the Secretary wrote for § 6701 is in Title 27 of the Code of Federal Regulations (CFR) and applies only to those people involved in alcohol, tobacco and firearms activities. Defendants Farley and UNITED STATES know that Mr. Allen is not involved in any such activities.

Since there is no proper purpose for the summons against Mr. Allen, any records sought cannot possibly be relevant to a non-existent purpose. Thus, Defendant UNITED STATES has failed the second prong of *Powell*.

The IRS does not possess, nor does it have any business or authority to possess any records of Mr. Allen. Thus, Defendant UNITED STATES has failed the third prong of *Powell*.

As Mr. Allen has no administrative connection to any of the Defendants, it is irrelevant that administrative steps have been followed. If the following of administrative steps was relevant in this case, then the Chinese government (or any other government for that matter) could follow all administrative steps for any reason against any American in order to prosecute a civil or criminal liability against any American. This is absurd!

Pursuant to the herein, the IRS administrative summons must be quashed and this matter must proceed on the First Amended Counterclaim.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on November 18, 2009



John Allen
C/o POB 2911
Zanesville, Ohio 43702

Certificate of Service

A true and correct copy of the foregoing has been served on the above date upon the following:

By First Class U.S. Mail

Daniel A. Applegate
Attorney for Defendant UNITED STATES
U.S. Dept. of Justice, Tax Division
P.O. Box 7238, Ben Franklin Station
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James C. Farley
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Independence, OH 44131

Commissioner of IRS
1111 Constitution Avenue, NW
Washington, D.C. 20224

Secretary of the Treasury
1500 Pennsylvania Ave., NW
Washington, D.C. 20220

Electronically

To all named Plaintiffs to protect their privacy and prevent any retaliation.



John Allen